

**FERDINAND R. VILLANUEVA, PRESIDING JUDGE, MCTC,
COMPOSTELA-NEW BATAAN, COMPOSTELA VALLEY PROVINCE,
PETITIONER, VS. JUDICIAL AND BAR COUNCIL, RESPONDENT.**

G.R. No. 211833. April 07, 2015

Ponente: REYES, J.

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REYES, J.:

Presiding Judge Ferdinand R. Villanueva (petitioner) directly came to this Court via a Petition for Prohibition, Mandamus, and Certiorari, and Declaratory Relief[1] under Rules 65 and 63 of the Rules of Court, respectively, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, to assail the policy of the Judicial and Bar Council (JBC), requiring five years of service as judges of first-level courts before they can qualify as applicant to second-level courts, on the ground that it is unconstitutional, and was issued with grave abuse of discretion.

The Facts

The petitioner was appointed on September 18, 2012 as the Presiding Judge of the Municipal Circuit Trial Court, Compostela-New Bataan, Poblacion, Compostela Valley Province, Region XI, which is a first-level court. On September 27, 2013, he applied for the vacant position of Presiding Judge in the following Regional Trial Courts (RTCs): Branch 31, Tagum City; Branch 13, Davao City; and Branch 6, Prosperidad, Agusan Del Sur.

In a letter[2] dated December 18, 2013, JBC's Office of Recruitment, Selection and Nomination, informed the petitioner that he was not included in the list of candidates for the said stations. On the same date, the petitioner sent a letter, through electronic mail, seeking reconsideration of his non-inclusion in the list of considered applicants and protesting the inclusion of applicants who did not pass the prejudicature examination.

The petitioner was informed by the JBC Executive Officer, through a letter[3] dated February 3, 2014, that his protest and reconsideration was duly noted by the JBC en banc. However, its decision not to include his name in the list of applicants was upheld due to the JBC's long-standing policy of opening the chance for promotion to second-level courts to, among others, incumbent judges who have served in their current position for at least five years, and since the petitioner has been a judge only for more than a year, he was excluded from the list. This caused the petitioner to take recourse to this Court.

In his petition, he argued that: (1) the Constitution already prescribed the qualifications of an RTC judge, and the JBC could add no more; (2) the JBC's five-year requirement violates the equal protection and due process clauses of the Constitution; and (3) the JBC's five-year requirement violates the constitutional provision on Social Justice and Human Rights for Equal Opportunity of Employment. The petitioner also asserted that the requirement of the Prejudicature Program mandated by Section 10[4] of Republic Act (R.A.) No. 8557[5] should not be merely directory and should be fully implemented. He further alleged that he has all the qualifications for the position prescribed by the Constitution and by Congress, since he has already complied with the requirement of 10 years of practice of law.

In compliance with the Court's Resolution[6] dated April 22, 2014, the JBC[7] and the Office of the Solicitor General (OSG)[8] separately submitted their Comments. Summing up the arguments of the JBC and the OSG, they essentially stated that the petition is procedurally infirm and that the assailed policy does not violate the equal protection and due process clauses. They posited that: (1) the writ of certiorari and prohibition cannot issue to prevent the JBC from performing its principal function under the Constitution to recommend appointees to the Judiciary because the JBC is not a tribunal exercising judicial or quasi-judicial function; (2) the remedy of mandamus and declaratory relief will not lie because the petitioner has no clear legal right that needs to be protected; (3) the equal protection clause is not violated because the classification of lower court judges who have served at least five years and those who have served less than five years is valid as it is performance and experience based; and (4) there is no violation of due process as the policy is merely internal in nature.

The Issue

The crux of this petition is whether or not the policy of JBC requiring five years of service as judges of first-level courts before they can qualify as applicant to second-level courts is constitutional.

Ruling of the Court

Procedural Issues:

Before resolving the substantive issues, the Court considers it necessary to first determine whether or not the action for certiorari, prohibition and mandamus, and declaratory relief commenced by the petitioner was proper.

One. The remedies of certiorari and prohibition are tenable. "The present Rules of Court uses two special civil actions for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. These are the special civil actions for certiorari and prohibition, and both are governed by Rule 65." [9] As discussed in the case of *Maria Carolina P. Araullo, etc., et al. v. Benigno Simeon C. Aquino III, etc., et al.*, [10] this Court explained that:

With respect to the Court, however, the remedies of certiorari and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, *supra*.

Thus, petitions for certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials. [11] (Citation omitted)

In this case, it is clear that the JBC does not fall within the scope of a tribunal, board, or officer exercising judicial or quasi-judicial functions. In the process of selecting and screening applicants, the JBC neither acted in any judicial or quasi-judicial capacity nor assumed unto itself any performance of judicial or quasi-judicial prerogative. However, since the formulation of guidelines and criteria, including the policy that the petitioner now assails, is necessary and incidental to the exercise of the JBC's constitutional mandate, a determination must be made on whether the JBC has acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing and enforcing the said policy.

Besides, the Court can appropriately take cognizance of this case by virtue of the Court's power of supervision over the JBC. Jurisprudence provides that the power of supervision is the power of oversight, or the authority to see that subordinate officers perform their duties. It ensures that the laws and the rules governing the conduct of a government entity are observed and complied with. Supervising officials see to it that rules are followed, but they

themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.[12]

Following this definition, the supervisory authority of the Court over the JBC is to see to it that the JBC complies with its own rules and procedures. Thus, when the policies of the JBC are being attacked, then the Court, through its supervisory authority over the JBC, has the duty to inquire about the matter and ensure that the JBC complies with its own rules.

Two. The remedy of mandamus cannot be availed of by the petitioner in assailing JBC's policy. The petitioner insisted that mandamus is proper because his right was violated when he was not included in the list of candidates for the RTC courts he applied for. He said that his non-inclusion in the list of candidates for these stations has caused him direct injury.

It is essential to the issuance of a writ of mandamus that the applicant should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required.[13] The petitioner bears the burden to show that there is such a clear legal right to the performance of the act, and a corresponding compelling duty on the part of the respondent to perform the act. The remedy of mandamus, as an extraordinary writ, lies only to compel an officer to perform a ministerial duty, not a discretionary one.[14] Clearly, the use of discretion and the performance of a ministerial act are mutually exclusive.

The writ of mandamus does not issue to control or review the exercise of discretion or to compel a course of conduct, which, it quickly seems to us, was what the petitioner would have the JBC do in his favor. The function of the JBC to select and recommend nominees for vacant judicial positions is discretionary, not ministerial. Moreso, the petitioner cannot claim any legal right to be included in the list of nominees for judicial vacancies. Possession of the constitutional and statutory qualifications for appointment to the judiciary may not be used to legally demand that one's name be included in the list of candidates for a judicial vacancy. One's inclusion in the list of the candidates depends on the discretion of the JBC, thus:

The fact that an individual possesses the constitutional and statutory qualifications for appointment to the Judiciary does not create an entitlement or expectation that his or her name be included in the list of candidates for a judicial vacancy. By submitting an application or accepting a recommendation, one submits to the authority of the JBC to subject the former to the search, screening, and selection process, and to use its discretion in deciding whether or not one should be included in the list. Indeed, assuming that if one has the legal right to be included in the list of candidates simply because he or she possesses the constitutional and statutory qualifications, then the application process would then be reduced to a mere mechanical function of the JBC; and the search, screening, and selection process would not only be unnecessary, but also improper. However, this is clearly not the constitutional intent. One's inclusion in the list of candidates is subject to the discretion of the JBC over the selection of nominees for a particular judicial post. Such candidate's inclusion is not, therefore, a legally demandable right, but simply a privilege the conferment of which is subject to the JBC's sound discretion.

Moreover, petitioner is essentially seeking a promotional appointment, that is, a promotion from a first-level court to a second level court. There is no law, however, that grants him the right to a promotion to second-level courts.[15] (Emphasis in the original)

Clearly, to be included as an applicant to second-level judge is not properly compellable by mandamus inasmuch as it involves the exercise of sound discretion by the JBC.

Three. The petition for declaratory relief is improper. "An action for declaratory relief should be filed by a person

interested under a deed, a will, a contract or other written instrument, and whose rights are affected by a statute, an executive order, a regulation or an ordinance. The relief sought under this remedy includes the interpretation and determination of the validity of the written instrument and the judicial declaration of the parties' rights or duties thereunder." [16] "[T]he purpose of the action is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, etc., for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach." [17]

In this case, the petition for declaratory relief did not involve an unsound policy. Rather, the petition specifically sought a judicial declaration that the petitioner has the right to be included in the list of applicants although he failed to meet JBC's five-year requirement policy. Again, the Court reiterates that no person possesses a legal right under the Constitution to be included in the list of nominees for vacant judicial positions. The opportunity of appointment to judicial office is a mere privilege, and not a judicially enforceable right that may be properly claimed by any person. The inclusion in the list of candidates, which is one of the incidents of such appointment, is not a right either. Thus, the petitioner cannot claim any right that could have been affected by the assailed policy.

Furthermore, the instant petition must necessarily fail because this Court does not have original jurisdiction over a petition for declaratory relief even if only questions of law are involved. [18] The special civil action of declaratory relief falls under the exclusive jurisdiction of the appropriate RTC pursuant to Section 19 [19] of Batas Pambansa Blg. 129, as amended by R.A.No. 7691. [20]

Therefore, by virtue of the Court's supervisory duty over the JBC and in the exercise of its expanded judicial power, the Court assumes jurisdiction over the present petition. But in any event, even if the Court will set aside procedural infirmities, the instant petition should still be dismissed.

Substantive Issues

As an offspring of the 1987 Constitution, the JBC is mandated to recommend appointees to the judiciary and only those nominated by the JBC in a list officially transmitted to the President may be appointed by the latter as justice or judge in the judiciary. Thus, the JBC is burdened with a great responsibility that is imbued with public interest as it determines the men and women who will sit on the judicial bench. While the 1987 Constitution has provided the qualifications of members of the judiciary, this does not preclude the JBC from having its own set of rules and procedures and providing policies to effectively ensure its mandate.

The functions of searching, screening, and selecting are necessary and incidental to the JBC's principal function of choosing and recommending nominees for vacancies in the judiciary for appointment by the President. However, the Constitution did not lay down in precise terms the process that the JBC shall follow in determining applicants' qualifications. In carrying out its main function, the JBC has the authority to set the standards/criteria in choosing its nominees for every vacancy in the judiciary, subject only to the minimum qualifications required by the Constitution and law for every position. The search for these long held qualities necessarily requires a degree of flexibility in order to determine who is most fit among the applicants. Thus, the JBC has sufficient but not unbridled license to act in performing its duties.

JBC's ultimate goal is to recommend nominees and not simply to fill up judicial vacancies in order to promote an effective and efficient administration of justice. Given this pragmatic situation, the JBC had to establish a set of uniform criteria in order to ascertain whether an applicant meets the minimum constitutional qualifications and possesses the qualities expected of him and his office. Thus, the adoption of the five-year requirement policy applied by JBC to the petitioner's case is necessary and incidental to the function conferred by the Constitution to the JBC.

Equal Protection

There is no question that JBC employs standards to have a rational basis to screen applicants who cannot be all accommodated and appointed to a vacancy in the judiciary, to determine who is best qualified among the applicants, and not to discriminate against any particular individual or class.

The equal protection clause of the Constitution does not require the universal application of the laws to all persons or things without distinction; what it requires is simply equality among equals as determined according to a valid classification. Hence, the Court has affirmed that if a law neither burdens a fundamental right nor targets a suspect class, the classification stands as long as it bears a rational relationship to some legitimate government end.[21]

"The equal protection clause, therefore, does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is reasonable and not arbitrary." [22] "The mere fact that the legislative classification may result in actual inequality is not violative of the right to equal protection, for every classification of persons or things for regulation by law produces inequality in some degree, but the law is not thereby rendered invalid." [23]

That is the situation here. In issuing the assailed policy, the JBC merely exercised its discretion in accordance with the constitutional requirement and its rules that a member of the Judiciary must be of proven competence, integrity, probity and independence. [24] "To ensure the fulfillment of these standards in every member of the Judiciary, the JBC has been tasked to screen aspiring judges and justices, among others, making certain that the nominees submitted to the President are all qualified and suitably best for appointment. In this way, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, more importantly, to the ineligible or disqualified." [25]

Consideration of experience by JBC as one factor in choosing recommended appointees does not constitute a violation of the equal protection clause. The JBC does not discriminate when it employs number of years of service to screen and differentiate applicants from the competition. The number of years of service provides a relevant basis to determine proven competence which may be measured by experience, among other factors. The difference in treatment between lower court judges who have served at least five years and those who have served less than five years, on the other hand, was rationalized by JBC as follows:

Formulating policies which streamline the selection process falls squarely under the purview of the JBC. No other constitutional body is bestowed with the mandate and competency to set criteria for applicants that refer to the more general categories of probity, integrity and independence.

The assailed criterion or consideration for promotion to a second-level court, which is five years experience as judge of a first-level court, is a direct adherence to the qualities prescribed by the Constitution. Placing a premium on many years of judicial experience, the JBC is merely applying one of the stringent constitutional standards requiring that a member of the judiciary be of "proven competence." In determining competence, the JBC considers, among other qualifications, experience and performance.

Based on the JBC's collective judgment, those who have been judges of first-level courts for five (5) years are better qualified for promotion to second-level courts. It deems length of experience as a judge as indicative of conversance with the law and court procedure. Five years is considered as a sufficient span of time for one to acquire professional skills for the next level court, declog the dockets, put in place improved procedures and an efficient case management system, adjust to the work environment, and gain extensive experience in the judicial process.

A five-year stint in the Judiciary can also provide evidence of the integrity, probity, and independence of judges seeking promotion. To merit JBC's nomination for their promotion, they must have had a "record of,

and reputation for, honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards." Likewise, their decisions must be reflective of the soundness of their judgment, courage, rectitude, cold neutrality and strength of character.

Hence, for the purpose of determining whether judges are worthy of promotion to the next level court, it would be premature or difficult to assess their merit if they have had less than one year of service on the bench.[26] (Citations omitted and emphasis in the original)

At any rate, five years of service as a lower court judge is not the only factor that determines the selection of candidates for RTC judge to be appointed by the President. Persons with this qualification are neither automatically selected nor do they automatically become nominees. The applicants are chosen based on an array of factors and are evaluated based on their individual merits. Thus, it cannot be said that the questioned policy was arbitrary, capricious, or made without any basis.

Clearly, the classification created by the challenged policy satisfies the rational basis test. The foregoing shows that substantial distinctions do exist between lower court judges with five year experience and those with less than five years of experience, like the petitioner, and the classification enshrined in the assailed policy is reasonable and relevant to its legitimate purpose. The Court, thus, rules that the questioned policy does not infringe on the equal protection clause as it is based on reasonable classification intended to gauge the proven competence of the applicants. Therefore, the said policy is valid and constitutional.

Due Process

The petitioner averred that the assailed policy violates procedural due process for lack of publication and non-submission to the University of the Philippines Law Center Office of the National Administrative Register (ONAR). The petitioner said that the assailed policy will affect all applying judges, thus, the said policy should have been published.

Contrary to the petitioner's contention, the assailed JBC policy need not be filed in the ONAR because the publication requirement in the ONAR is confined to issuances of administrative agencies under the Executive branch of the government.[27] Since the JBC is a body under the supervision of the Supreme Court,[28] it is not covered by the publication requirements of the Administrative Code.

Nevertheless, the assailed JBC policy requiring five years of service as judges of first-level courts before they can qualify as applicants to second-level courts should have been published. As a general rule, publication is indispensable in order that all statutes, including administrative rules that are intended to enforce or implement existing laws, attain binding force and effect. There are, however, several exceptions to the requirement of publication, such as interpretative regulations and those merely internal in nature, which regulate only the personnel of the administrative agency and not the public. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties.[29]

Here, the assailed JBC policy does not fall within the administrative rules and regulations exempted from the publication requirement. The assailed policy involves a qualification standard by which the JBC shall determine proven competence of an applicant. It is not an internal regulation, because if it were, it would regulate and affect only the members of the JBC and their staff. Notably, the selection process involves a call to lawyers who meet the qualifications in the Constitution and are willing to serve in the Judiciary to apply to these vacant positions. Thus, it is but a natural consequence thereof that potential applicants be informed of the requirements to the judicial positions, so that they would be able to prepare for and comply with them.

The Court also noted the fact that in JBC-009, otherwise known as the Rules of the Judicial and Bar Council, the JBC had put its criteria in writing and listed the guidelines in determining competence, independence, integrity and probity. Section 1, Paragraph 1 of Rule 9 expressly provides that applicants for the Court of Appeals and the Sandiganbayan, should, as a general rule, have at least five years of experience as an RTC judge, thus:

RULE 9 - SPECIAL GUIDELINES FOR NOMINATION TO A VACANCY IN THE COURT OF APPEALS AND SANDIGANBAYAN

Section 1. Additional criteria for nomination to the Court of Appeals and the Sandiganbayan. - In addition to the foregoing guidelines the Council should consider the following in evaluating the merits of applicants for a vacancy in the Court of Appeals and Sandiganbayan:

1. As a general rule, he must have at least five years of experience as a judge of Regional Trial Court, except when he has in his favor outstanding credentials, as evidenced by, inter alia, impressive scholastic or educational record and performance in the Bar examinations, excellent reputation for honesty, integrity, probity and independence of mind; at least very satisfactory performance rating for three (3) years preceding the filing of his application for nomination; and excellent potentials for appellate judgeship.

x x x x x x x x

(Emphasis ours)

The express declaration of these guidelines in JBC-009, which have been duly published on the website of the JBC and in a newspaper of general circulation suggests that the JBC is aware that these are not mere internal rules, but are rules implementing the Constitution that should be published. Thus, if the JBC were so-minded to add special guidelines for determining competence of applicants for RTC judges, then it could and should have amended its rules and published the same. This, the JBC did not do as JBC-009 and its amendatory rule do not have special guidelines for applicants to the RTC.

Moreover, jurisprudence has held that rules implementing a statute should be published. Thus, by analogy, publication is also required for the five-year requirement because it seeks to implement a constitutional provision requiring proven competence from members of the judiciary.

Nonetheless, the JBC's failure to publish the assailed policy has not prejudiced the petitioner's private interest. At the risk of being repetitive, the petitioner has no legal right to be included in the list of nominees for judicial vacancies since the possession of the constitutional and statutory qualifications for appointment to the Judiciary may not be used to legally demand that one's name be included in the list of candidates for a judicial vacancy. One's inclusion in the shortlist is strictly within the discretion of the JBC.[30]

As to the issue that the JBC failed or refused to implement the completion of the prejudicature program as a requirement for appointment or promotion in the judiciary under R.A. No. 8557, this ground of the petition, being unsubstantiated, was unfounded. Clearly, it cannot be said that JBC unlawfully neglects the performance of a duty enjoined by law.

Finally, the petitioner argued but failed to establish that the assailed policy violates the constitutional provision under social justice and human rights for equal opportunity of employment. The OSG explained:

[T]he questioned policy does not violate equality of employment opportunities. The constitutional provision does not call for appointment to the Judiciary of all who might, for any number of reasons, wish to apply. As with all professions, it is regulated by the State. The office of a judge is no ordinary office. It is imbued with public interest and is central in the administration of justice x x x. Applicants who meet the constitutional and legal qualifications must vie and withstand the competition and rigorous screening and selection process. They

must submit themselves to the selection criteria, processes and discretion of respondent JBC, which has the constitutional mandate of screening and selecting candidates whose names will be in the list to be submitted to the President. So long as a fair opportunity is available for all applicants who are evaluated on the basis of their individual merits and abilities, the questioned policy cannot be struck down as unconstitutional.[31] (Citations omitted)

From the foregoing, it is apparent that the petitioner has not established a clear legal right to justify the issuance of a preliminary injunction. The petitioner has merely filed an application with the JBC for the position of RTC judge, and he has no clear legal right to be nominated for that office nor to be selected and included in the list to be submitted to the President which is subject to the discretion of the JBC. The JBC has the power to determine who shall be recommended to the judicial post. To be included in the list of applicants is a privilege as one can only be chosen under existing criteria imposed by the JBC itself. As such, prospective applicants, including the petitioner, cannot claim any demandable right to take part in it if they fail to meet these criteria. Hence, in the absence of a clear legal right, the issuance of an injunctive writ is not justified.

As the constitutional body granted with the power of searching for, screening, and selecting applicants relative to recommending appointees to the Judiciary, the JBC has the authority to determine how best to perform such constitutional mandate. Pursuant to this authority, the JBC issues various policies setting forth the guidelines to be observed in the evaluation of applicants, and formulates rules and guidelines in order to ensure that the rules are updated to respond to existing circumstances. Its discretion is freed from legislative, executive or judicial intervention to ensure that the JBC is shielded from any outside pressure and improper influence. Limiting qualified applicants in this case to those judges with five years of experience was an exercise of discretion by the JBC. The potential applicants, however, should have been informed of the requirements to the judicial positions, so that they could properly prepare for and comply with them. Hence, unless there are good and compelling reasons to do so, the Court will refrain from interfering with the exercise of JBC's powers, and will respect the initiative and independence inherent in the latter.

WHEREFORE, premises considered, the petition is DISMISSED. The Court, however, DIRECTS that the Judicial and Bar Council comply with the publication requirement of (1) the assailed policy requiring five years of experience as judges of first-level courts before they can qualify as applicant to the Regional Trial Court, and (2) other special guidelines that the Judicial and Bar Council is or will be implementing.

SO ORDERED.

Carpio, Velasco, Jr., Bersamin, Del Castillo, Perez, and Mendoza, JJ., concur.

Leonardo-De Castro and Peralta, JJ., concur and join the concurring opinion of Justice Brion.

Brion and Leonen, JJ., see concurring opinions.

Sereno, C.J. and Jardeleza, J., no part.

Villarama, Jr., J., on official leave.

Perlas-Bernabe, J., on leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on April 7, 2015 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on May 26, 2016 at 1:45 p.m.

Very truly yours,

ENRIQUETA ESGUERRA-VIDAL
Clerk of Court

[1] Rollo, pp. 3-19.

[2] Id. at 70.

[3] Id. at 6.

[4] Section 10. As soon as PHILJA shall have been fully organized with the composition of its Corps of Professorial Lecturers and other personnel, only participants who have completed the programs prescribed by the Academy and have satisfactorily complied with all the requirements incident thereto may be appointed or promoted to any position or vacancy in the Judiciary.

[5] AN ACT ESTABLISHING THE PHILIPPINE JUDICIAL ACADEMY, DEFINING ITS POWERS AND FUNCTIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

[6] Rollo, p. 28.

[7] Id. at 40-60.

[8] Id. at 68-95.

[9] Maria Carolina P. Araullo, etc., et al. v. Benigno Simeon C. Aquino III, etc., et al., G.R. No. 209287, July 1, 2014.

[10] G.R. No. 209287, July 1, 2014.

[11] Id.

[12] Francis H. Jardeleza v. Chief Justice Maria Lourdes P. A. Sereno, the Judicial and Bar Council and Executive Secretary Paquito N. Ochoa, Jr., G.R. No. 213181, August 19, 2014.

[13] Star Special Watchman and Detective Agency, Inc., Celso A. Fernandez and Manuel V. Fernandez v. Puerto Princesa City, Mayor Edward Hagedorn and City Council of Puerto Princesa City, G.R. No. 181792, April 21, 2014.

[14] Special People, Inc. Foundation v. Canda, G.R. No. 160932, January 14, 2013, 688 SCRA 403, 424.

[15] Rollo, pp. 57-58.

[16] Malana, et al. v. Tappa, et al., 616 Phil. 177, 186 (2009).

[17] Hon. Quisumbing, et al. v. Gov. Garcia, et al., 593 Phil. 655, 674 (2008).

[18] See *Bankers Association of the Philippines v. Commission on Elections*, G.R. No. 206794, November 27, 2013, 710 SCRA 608, 618.

[19] Section 19. Jurisdiction in civil cases. - Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

x x x x x x x x

(6) In all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions;

x x x x x x x x

[20] AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA, BLG. 129, OTHERWISE KNOWN AS THE "JUDICIARY REORGANIZATION ACT OF 1980". Approved on March 25, 1994.

[21] *Supra* note 10.

[22] *National Power Corporation v. Pinatubo Commercial*, 630 Phil. 599, 609 (2010).

[23] *Garcia v. Drilon*, G.R. No. 179267, June 25, 2013, 699 SCRA 352, 419.

[24] CONSTITUTION, Article VIII, Section 7(3) states:

3. A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

[25] *Supra* note 12.

[26] *Rollo*, pp. 48-49.

[27] Administrative Code, Book VII (Administrative Procedure) provides:

Section 1. Scope. - This Book shall be applicable to all agencies as defined in the next succeeding section, except the Congress, the Judiciary, the Constitutional Commissions, military establishments in all matters relating exclusively to Armed Forces personnel, the Board of Pardons and Parole, and state universities and colleges.

[28] 1987 CONSTITUTION, Article VIII, Judicial Department states:

Section 8. - A Judicial and Bar Council is hereby created under the supervision of the Supreme Court xxx.

[29] *Tañada v. Hon. Tuvera*, 230 Phil. 528, 535 (1986).

[30] *Supra* note 12.

[31] *Rollo*, pp. 86-87.

SEPARATE CONCURRING OPINION

BRION, J.:

I concur with the majority's ruling to dismiss the petition and with the directive to the Judicial and Bar Council (JBC). I am filing this Separate Concurring Opinion, however, to reflect my own views on the confluence of the Court's exercise of its supervisory jurisdiction over the JBC and its expanded jurisdiction in determining grave

abuse of discretion on the part of governmental entities and agencies.

Before us is Ferdinand Villanueva's (Villanueva or petitioner) petition for certiorari, prohibition and mandamus assailing the Judicial and Bar Council (JBC or respondent) action of excluding him from the list of candidates for the vacancies in the following Regional Trial Courts: Branch 31, Tagum City; Branch 13, Davao City; and Branch 6, Prosperidad, Agusan del Sur.

In taking cognizance of Villanueva's petition, the majority applied the Court's expanded jurisdiction under Section 1, Article VIII of the Constitution and explained that the remedies of certiorari and prohibition are both available to correct grave abuse of discretion amounting to lack or excess of jurisdiction not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions, but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government even if the latter does not exercise judicial, quasi-judicial or ministerial functions.[1]

A very recent case before this Court involving the JBC (which the ponencia cited in its earlier draft) is *Jardeleza v. Sereno*,[2] where the Court, for the first time since the enactment of the 1987 Constitution, nullified an action by the JBC. In so doing, the Court exercised both its expanded jurisdiction to review acts of government agencies amounting to grave abuse of discretion, and its supervisory jurisdiction over the JBC.

In *Jardeleza*, the JBC's act of selectively applying its own rules, which resulted in the violation of the petitioner (now Justice) Francis Jardeleza's due process rights, both amounted to a grave abuse of discretion and to a cause that triggered the Court's supervisory jurisdiction over the JBC. The JBC's grave abuse of discretion necessarily called for the Court's duty to supervise the JBC - under the circumstances of that case - to make sure that it would follow its own rules.

Unlike the selective application of the JBC's own rules in *Jardeleza*, the JBC's assailed actions in the present case were in accord with the policies it had long laid down. The application of this policy, according to the Villanueva petition, violated the Constitution as it disregarded the enumeration of qualifications of members of the judiciary under Article VIII, Section 7; violated as well his due process and equal protection rights; and are contrary to the socio-economic provisions in Article XIII, Section 3.

A reading of Villanueva's allegations shows that he properly alleged that the JBC committed grave abuse of discretion, but he ultimately failed to prove his claims. As the majority eventually held, the JBC acted within its power to prescribe its own policies as part, and in the course, of determining the constitutional qualifications required of every member of the bench. I agree with the majority's approach and thus maintain that it properly took cognizance of the Villanueva petition.

In acting as it did, the Court - while acting pursuant to its expanded jurisdiction (by testing for grave abuse of discretion and finding none) -effectively and subsequently acted pursuant to its supervisory jurisdiction over the JBC. That the Court so acted is not improper as the petition in fact also validly invoked the Court's supervisory jurisdiction over the JBC under its allegations. Note that the petition called for the determination of whether the JBC's policy contravened constitutional precepts.

In other words, the present petition *prima facie* claimed the commission of grave abuse of discretion by the JBC to sufficiently trigger the Court's expanded jurisdiction. No grave abuse however or any "capricious or whimsical exercise of judgment," as claimed, was found. But at the same time, the allegations likewise brought into question the JBC's actions, which actions are within the power of the Court to direct under its constitutional supervisory power over the JBC.

Notably, the Court, in examining whether Villanueva's right to due process had been violated, ruled that the JBC's

failure to publish its policy of requiring five years of service to qualify for a lower court judge position did not rise to the level of a grave abuse of discretion. Nevertheless, the majority held that, under the circumstances, these policies should have been published; it further directed the JBC to publish policies or guidelines that it is or will be implementing, subject to the approval of the Court.

I agree with the majority's conclusion and directive, and note that the publication of the JBC's policies is in line with its thrust to "to insure transparency in its proceedings and promote stability and uniformity in its guiding precepts and principles,"[3] as well as with the Constitutional policy to promote transparency in government processes.[4]

Lest the thrust and full import of the Court's present ruling be lost, let me stress that the present case gives us the opportunity to address important questions left unaddressed by the Court's recent ruling in Jardeleza:

May the Court exercise its supervisory jurisdiction over the JBC separate from the exercise of its expanded jurisdiction over acts of grave abuse of discretion of government agencies?

If so, what remedy is available for parties wishing to secure redress under this legal situation and how can this remedy be availed of?

To fully address these questions, it is crucial to first fully understand the nature of certiorari before and after the 1987 Constitution and how the Court has been using this remedy.

A. Certiorari under the 1987 Constitution

Our use of the remedy of certiorari has evolved and expanded along with the development of constitutional litigation under the 1987 Constitution.

The Court - in giving due course to (or dismissing) public interest petitions brought before it - has breathed life to the second paragraph of Section 1, Article VIII of the 1987 Constitution, an innovation that eventually has been labeled as its "expanded jurisdiction." At the same time, it continues to adhere to the practice of judicial review embodied in the first paragraph of Section 1 or what, for clarity, I refer to as the Court's "traditional jurisdiction"

The Court's exercise of its traditional jurisdiction is rooted in its power of judicial review which gives the Court the authority to strike down acts of the legislative and/or executive, constitutional bodies or administrative agencies that are contrary to the Constitution. The power of judicial review is part and parcel of the Court's judicial power and is a power inherent in all courts.[5]

To be successfully mounted, the petition before the Court must be embodied in an actual case, and the following requirements must be complied with: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[6]

Remedies used to invoke judicial review under the Court's traditional jurisdiction include declaratory relief, certiorari and prohibition. These remedies mirror the nature of the traditional concept of judicial review - i.e., that the declaration of the unconstitutionality of a law or act of government must be within the context of an actual case or controversy brought before the courts. Thus, the requirements for filing an action for declaratory relief[7] echo the requisites for an actual case or controversy, similarly with certiorari and prohibition which historically developed as petitions to assail judicial or quasi-judicial acts and which effectively confine these remedies to errors of jurisdiction involving adjudicator/functions.

Note, at this point, that the enumeration of the Supreme Court's appellate jurisdiction under Section 5, paragraph 2 of the 1987 Constitution refers to the exercise of its traditional jurisdiction. The enumeration of what may be reviewed by the Court all refer to cases, with reference to the traditional jurisdiction of settling actual cases or controversies under Section 1, Article VIII, viz:

2. Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

- a. All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
- b. All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
- c. All cases in which the jurisdiction of any lower court is in issue.
- d. All criminal cases in which the penalty imposed is reclusion perpetua or higher.
- e. All cases in which only an error or question of law is involved. (emphases supplied)

The modes by which these cases may reach the Supreme Court for review are either through an appeal of errors involving questions of law or questions of law and facts (via a petition for review on certiorari), or through a petition for certiorari assailing errors of jurisdiction.

Thus, certiorari under Section 5, paragraph 2 refers to a recourse under the traditional jurisdiction of the Supreme Court, as provided under the first paragraph of Section 1, Article VIII of the 1987 Constitution.

At the same time, the Court has recognized and acted on the basis of its expanded jurisdiction under the second paragraph of Section 1, Article VIII of the 1987 Constitution, albeit not explicitly at first. Thus, we have cases where the Court, recognizing its duty to determine grave abuse of discretion on the part of governmental agencies or entities, reviewed acts that are neither judicial nor quasi-judicial in nature. Notably, the procedural media used in invoking the Court's expanded jurisdiction have been petitions for certiorari, or prohibition.[8] This practice reflects the wording of Section 1, paragraph 2, which does not limit the determination of grave abuse of discretion to quasi-judicial or judicial acts, but to any act involving the exercise of discretion on the part of the government.[9]

A distinctive feature in these developments is the strong correlation between the Court's exercise of its expanded jurisdiction, and its relaxation of the requirements for actual case or controversies.[10] The Court relaxes the requirements for judicial review when the petition raises matters of transcendental importance. That a matter is of transcendental importance tempers the standing requirement for judicial review, which in turn, indirectly relaxes the presence of an actual case or controversy itself.

Amidst these jurisprudential developments, the Rules of Court has remained static; its express terms remained confined to the courts' exercise of traditional jurisdiction over judicial or quasi-judicial acts. Yet the Court unhesitatingly used the remedies of certiorari and prohibition to enforce its power and to undertake its duty to determine grave abuse of discretion on the part of the government. Thereby, the Court effectively relaxed the rules on certiorari, notably by allowing its use in the review of acts of government that are neither judicial nor quasi-judicial.[11]

It is in this latter sense that the majority in *Jardeleza* and in the present case allowed the use of certiorari to determine whether there had been grave abuse of discretion on the part of the JBC. As I emphasized in my Concurring and Dissenting Opinion in *Araullo v. Aquino*,[12] a *prima facie* showing of grave abuse of discretion

is both sufficient and necessary to trigger the Court's expanded jurisdiction, in the same way that an actual case or controversy is necessary to invoke the Court's traditional power of judicial review. In cases that successfully invoked the Court's expanded jurisdiction, the transcendental importance of the public issue presented by the petition likewise relaxed the standing requirement (such that a Filipino citizen, by virtue of his citizenship, possesses the standing to question a governmental act). The prima facie showing of a grave abuse of discretion, on the other hand, takes the place of the actual case or controversy requirement in the traditional concept of judicial review.

The present petition, as earlier mentioned, successfully alleged the commission of grave abuse of discretion, but the allegation, on deeper consideration, was not grave nor serious enough to trigger the Court's expanded jurisdiction. Unlike in *Jardeleza* where the JBC violated its own rules thereby gravely abusing its discretion, the JBC's action in the present petition was actually in accordance with its policy, which policy is within its power to formulate. That this policy later turns out not to be a "grave" abuse of discretion translates to the petitioner's failure to prove that he is entitled to redress under the Court's expanded jurisdiction. This legal conclusion, however, does not render the JBC fully immune to the Court scrutiny as the claimed transgression may also open or trigger a parallel and separate constitutionally granted Court action - the Court's supervisory jurisdiction over the JBC.

B. Supervisory jurisdiction over the JBC

Article VIII, Section 8(1) and (5) provide that "A Judicial and Bar Council is hereby created under the supervision of the Supreme Court. It may exercise such other functions and duties as the Supreme Court may assign to it."

Supervision, as a legal concept, has been defined as the power of oversight, or the authority to see that subordinate officers perform their duties.[13] The Constitution's use of the concept of "supervision" carries various significations that should not be missed.

First, the JBC is a body subordinate to the Supreme Court although the Chief Justice who is *primus inter pares* within the Court also heads the JBC as its *ex officio* Chair.

Second, the Court's power of supervision over the JBC gives the Court the power to ensure that the law or the rules governing the conduct of the JBC are followed.

And third, the Court as the supervising entity merely sees to it that the rules are followed, but it does not, by itself, lay down these rules, nor does it have the discretion to modify or replace them. If the rules are not observed, the Court may only order the work done or redone, but only to conform to higher applicable rules.[14]

In more succinct terms, the Court's supervisory authority over the JBC involves ensuring that the JBC's actions are in accord with the Constitution, as well as with its own rules. Thus, when there are allegations regarding the JBC's non-compliance with the Constitution or its own rules, especially when it comes from an applicant who is in the position to know of these infirmities, then the Court, through its supervisory authority over the JBC, has the duty to inquire about the matter and ensure that the JBC complies with the laws applicable to it.

B.1 The Court's supervisory

jurisdiction over the JBC is

general, and not limited to

administration

That the Court's supervisory authority extends beyond mere administrative supervision is beyond question.

Administrative supervision involves overseeing the operations of agencies to ensure that they are managed effectively, efficiently and economically, but without interference with day-to-day activities.[15] In contrast, general supervision involves ensuring that the agency supervised follows their functions, directing them to redo their actions should these be contrary to law.

Textually, nothing in the 1987 Constitution limits the Court to the exercise of mere administrative powers over the JBC when called for. Section 8, Article VIII of the 1987 Constitution provides:

A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. Of the Members first appointed, the representative of the Integrated Bar shall serve for four years, the professor of law for three years, the retired Justice for two years, and the representative of the private sector for one year.

The Clerk of the Supreme Court shall be the Secretary ex officio of the Council and shall keep a record of its proceedings.

The regular Members of the Council shall receive such emoluments as may be determined by the Supreme Court. The Supreme Court shall provide in its annual budget the appropriations for the Council.

The Council shall have the principal function of recommending appointees to the judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

Section 8, Article VIII clearly grants to the Supreme Court the power and duty of supervision over the JBC. It does not specify nor limit the Court to administrative supervision over the JBC, but couches the grant of power to the Court in general terms, i.e., "supervision."

When the Constitution used the general term "supervision" over the JBC, it meant to grant the Court general supervision, for had it meant to limit the Court to administrative supervision, or to the JBC's administration, then it could have used these words to convey this concept. Even the Administrative Code, which provides definitions of administrative relationships, recognizes the need for a law to specify its intent to limit the supervising authority's to administrative supervision, by making the function of administration a part of supervision, viz:

(c) Unless a different meaning is explicitly provided in the specific law governing the relationship of particular agencies, the word "supervision" shall encompass administrative supervision as defined in this paragraph.[16]

Otherwise stated, when a law grants a government agency supervision over another agency, it automatically includes administrative supervision. Thus, if an agency merely exercises administrative authority over another, this should be specified in the law granting it.

Additionally, the Court, has, in the past, exercised its general supervision over the JBC. In *In Re Appointments* dated March 30, 1998 of Hon. Mateo A. Valenzuela and Hon. Placido B. Vallarta (Valenzuela),[17] for instance, the Court en banc motu proprio decided to resolve the issue of whether the election ban applies to the Judiciary in lieu of the constitutional questions raised by the JBC's attempts to continue its deliberations in order to transmit a list of nominees to the President despite the ban. In a Resolution ordering the interested parties (none of whom raised a petition before the Court) to submit a comment regarding the matter, the Court en banc instructed the JBC to defer any action over the appointments pending the Court's resolution of the election ban issue.

The Court's acts in Valenzuela can hardly be described as administrative supervision. In Valenzuela, the Court en

banc found that the JBC's actions could violate the Constitution and thus instructed its members to defer its deliberations and to desist from transmitting any list of nominees to the President until the Court en banc had resolved the constitutional question. The Court en banc initiated the determination of the constitutional question without any interested party filing a petition for its resolution; from this unique perspective, the Court's action was an exercise of its power to ensure that the JBC performed its functions in accordance with the law, i.e., its power of general supervision over the JBC.

The Court, after considering the pleadings filed by interested parties in Valenzuela, decided to annul appointments that violated the constitutional prohibition on the election ban. This Court action no longer involved an exercise of its supervisory jurisdiction, but had spilled over into its expanded jurisdiction to annul acts of grave abuse of discretion, which according to Valenzuela, violated the Constitution. Interestingly, the Court distinguished this ruling from *de Castro v. JBC*[18] with respect to appointments to vacancies in the Supreme Court. The fine distinctions raised, however, do not negate the fact that the Court exercised acts of general supervision over the JBC in Valenzuela.

The distinction between the Court's exercises of its power of supervision over the JBC and its expanded jurisdiction over all government agencies is important, lest we be accused of exceeding our own jurisdiction and meddling with the exclusive affairs of an independent constitutional body.

To reiterate, the Court, as an aspect of its supervisory power, can direct the JBC to defer or stop its actions and to redo them, should it be necessary to comply with the Constitution. We have, in the past, exercised our supervisory jurisdiction when we instructed the JBC in Valenzuela to defer its proceedings pending the resolution of a constitutional question; directed the JBC to review its rules in *Jardeleza v. Sereno*[19]; and now, directed the JBC to publish its own rules.

In contrast, the Court, as an aspect of its expanded jurisdiction, has annulled acts that violate the Constitution: the Court did this when it annulled the appointments made by the President in violation of the election ban in Valenzuela; and when it annulled the application of the Rule 10, Section 2 of the JBC Rules to Justice Francis H. Jardeleza in *Jardeleza v. Sereno*.

Note at this point, that the independent character of a constitutional body does not remove it from the Court's jurisdiction. The Commission on Elections, Commission on Audit, Commission on Civil Service and the Office of the Ombudsman are all independent constitutional bodies - and none of them can invoke their independence as a means to avoid judicial review, more so when their assailed acts involve grave abuse of discretion.

Additionally, the Court's general supervision over the JBC is in line with its constitutionally-bestowed discretion to assign additional functions and duties to the JBC.

This grant of discretion empowers the Court to direct the JBC to redo its acts that are contrary to law. To be sure, the Court's power to assign duties to the JBC as an aspect of general supervision over it does not grant the Court the power to substitute its discretion over the JBC; the Court, in exercising its supervisory jurisdiction over the JBC, can at most direct it to redo their actions that are contrary to the law or to the Constitution.

Lastly, that the Court has issued A.M. No. 03-11-16-SC or A Resolution Strengthening The Role and Capacity of the Judicial and Bar Council and Establishing the Offices Therein, which acknowledges the Chief Justice's administrative authority of the JBC, does not contradict the Court's power of general supervision over it. First, the Constitution recognizes the Chief Justice as the JBC's ex officio chair, implying her administrative authority over the JBC. A.M. No. 03-11-16-SC merely affirms this provision in the Constitution. Second, the Court's administrative authority over the JBC does not rule out its power to supervise it, and may, as illustrated in the

Administrative Code, be construed as an aspect of general supervision.

B.2 The Court's supervisory

jurisdiction as applied in the

present case

The current petition questions the JBC's policies for having violated the Constitution but not at the level where these policies have been issued with grave abuse of discretion. As the majority eventually held, these policies are in accord with the JBC's powers to determine whether applicants possess the requirements for members of the bench. The majority, however, noted that these policies should be published, and issued a directive to this effect.

To arrive at this conclusion, however, the Court must necessarily wear its supervisory hat to determine whether the JBC's actions had been in accord with the Constitution and relevant laws.

In this regard, I ask: is the Court, in exercising its supervisory jurisdiction over the JBC, limited to the examination of acts alleged to have been committed with grave abuse of discretion?

The Court is not and cannot be so limited under the terms of the 1987 Constitution.

Article VIII, Section 8 - the provision for the Court's supervision over the JBC - is separate and more specific than the general grave abuse of discretion provision under Section 1, Article VIII of the 1987 Constitution. Thus, this supervisory authority, as a separate and more specific grant of power, may be invoked and exercised separately from the Court's traditional and expanded jurisdictions.

In the present case, I believe that what we ultimately undertook, based on the conclusion we arrived at, was an exercise of our supervisory jurisdiction over the JBC, made as a parallel power in the course of acting pursuant to our expanded jurisdiction. From the prism of a petition for certiorari, we yet again relaxed our rules when we allowed the use of the petition for another power of the Court; we allowed the use of certiorari to invoke the Court's supervisory jurisdiction.

In these lights, the Court should neither be hesitant nor timid in exercising its supervisory jurisdiction over the JBC, without encroaching on their prerogative to determine whether applicants to the judiciary possess the characteristics that the Constitution requires of each member of the bench.

I believe, too, that this active Court role is necessary in light of the recent cases brought before us and the issues that they presented. But the Court's approach should be made very clear, particularly when a certiorari would be the medium used, to avoid confusing the traditional, the expanded, and the supervisory occasions in invoking the Court's jurisdiction.

To reiterate, the Court's power of supervision over the JBC is a power granted distinctly and separately from the Court's traditional judicial review and expanded jurisdiction powers. Thus, the exercise of supervision does not need to be limited to instances where there is a prima facie showing of grave abuse of discretion (as in petitions invoking the Court's expanded jurisdiction). Neither should it be exercised only in conjunction with the Court's judicial power to settle actual cases or controversies.

To forestall confusion in the future, the rules in this regard should be very clear, particularly on when and how the Court's supervisory power over the JBC may be invoked. Because the Court's power is independently granted, recourse to the Court based on its duty to supervise should not be confined to highly exceptional circumstances of grave abuse of discretion or as an adjunct of adjudication.

Note, too, that we exercised our power of supervision over the JBC when the Court's majority in Jardeleza

recommended that a review of its rules be made in light of the due process rights violations in that case. This was a review of the JBC's quasi-legislative power and was a distinct act of supervision separate from the exercise of our expanded jurisdiction to nullify the grave abuse of discretion the JBC committed when it applied the unanimity rule against Jardeleza.

As a final point, the recent cases involving the JBC has shown us that its exercise of discretion is not infallible, and that it can commit errors that violate the Constitution, or even its own rules. These abuses, no matter how well-intentioned, should not be left unchecked, and the Court, as the body tasked with supervisory authority over the JBC, should open up and clarify the avenues by which these JBC errors may be remedied. The power to take part in the President's power to appoint judicial officers is too important to be hindered by mere technicalities and should be closely safeguarded.

[1] Araullo v. Aquino, G.R. No. 209827, July 1, 2014.

[2] G.R. No. 213181, August 19, 2014.

[3] Whereas clause of JBC-009 provides:

WHEREAS, while the Council has been applying similar criteria in its assessment of candidates to the judicial office or the Ombudsman or deputy Ombudsman, there is a need to put these criteria in writing to insure transparency in its proceedings and promote stability and uniformity in its guiding precepts and principles;

[4] See, for instance, the following provisions:

Article III, Section 7

Section 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Article VI, Section 16, par. 4

Each House shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may, in its judgment, affect national security; and the yeas and nays on any question shall, at the request of one-fifth of the Members present, be entered in the Journal. Each House shall also keep a Record of its proceedings.

Article VI, Section 20

Section 20. The records and books of accounts of the Congress shall be preserved and be open to the public in accordance with law, and such books shall be audited by the Commission on Audit which shall publish annually an itemized list of amounts paid to and expenses for each Member.

Article VI, Section 21

Section 21. The Senate or the House of Representatives or any of its respective committees may conduct inquiries in aid of legislation in accordance with its duly published rules of procedure. The rights of persons appearing in, or affected by, such inquiries shall be respected.

Article XI, Section 17

Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

[5] As the Court in *Angara v. Electoral Commission* 63 Phil. 139, 156-157 (1936) said:

xxx The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitation and restrictions embodied in our Constitution are real as they should be in any living constitution. In the United States where no express constitutional grant is found in their constitution, the possession of this moderating power of the courts, not to speak of its historical origin and development there, has been set at rest by popular acquiescence for a period of more than one and a half centuries. In our case, this moderating power is granted, if not expressly, by clear implication from section 2 of article VIII of our constitution.

The Constitution is a definition of the powers of government. Who is to determine the nature, scope and extent of such powers? The Constitution itself has provided for the instrumentality of the judiciary as the rational way. And when the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution.

[6] *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 35; and *Francisco v. House of Representatives*, 460 Phil. 830, 842 (2003).

[7] Rule 63, Section 1 of the Rules of Court provides:

Section 1. Who may file petition. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. (Bar Matter No. 803, 17 February 1998)

An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule, (la, R64)

[8] See, for instance, the recent cases where the Court exercised its expanded jurisdiction: *Greco Antonious Beda B. Belgica, et. al. v. Honorable Executive Secretary Paquito N. Ochoa, Jr., et. al.*, GR No. 208566, November 19, 2013; *James M. Imbong, et. al. v. Hon. Paquito N. Ochoa, Jr., et. al.*, GR No. 204819, April 8, 2014; *Maria Carolina P. Araullo, et. al. v. Benigno Simeon Aquino III, et. al.*, GR No. 209287, July 1, 2014

[9] See the discussion on the "expanded certiorari jurisdiction" of the Court in *Francisco v. House of Representatives*, 460 Phil. 830, 883, 909-910 (2003), viz:

To ensure the potency of the power of judicial review to curb grave abuse of discretion by "any branch or instrumentalities of government," the afore-quoted Section 1, Article VIII of the Constitution engraves, for the first time into its history, into block letter law the so-called "expanded certiorari jurisdiction" of this Court, the nature of and rationale for which are mirrored in the following excerpt from the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion:

x x x x x x x x

The first section starts with a sentence copied from former Constitutions. It says:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

I suppose nobody can question it.

The next provision is new in our constitutional law. I will read it first and explain.

Judicial power includes the duty of courts of justice to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part or instrumentality of the government.

Fellow Members of this Commission, this is actually a product of our experience during martial law. As a matter of fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political questions and got away with it. As a consequence, certain principles concerning particularly the writ of habeas corpus, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime, xxx

x x x x x x x x

Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question.³⁵ (Italics in the original; emphasis and underscoring supplied)

[10] See the ponencia's discussion of the transcendental importance doctrine in *Arturo de Castro v. Judicial and Bar Council*, G.R. No. 191002, March 17, 2010, 615 SCRA 666, 722-728.

[11] *Gutierrez v. House of Representatives Committee on Justice*, G.R. No. 193459. February 15, 2011 643 SCRA 198, 230-233.

[12] *Supra* note 1.

[13] More often than not, supervision is defined in relation with the concept of control. In *Social Justice Society v. Atienza*, 568 Phil. 658, 715 we defined "supervision" as follows:

[Supervision] means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer ha[s] done in the performance of his duties and to substitute the judgment of the former for that of the latter.

Under this definition, the Court cannot dictate on the JBC the results of its assigned task, i.e., who to recommend or what standards to use to determine who to recommend. It cannot even direct the JBC on how and when to do its duty, but it can, under its power of supervision, direct the JBC to "take such action or step as prescribed by law to make them perform their duties," if the duties are not being performed because of JBC's fault or inaction, or because of extraneous factors affecting performance. Note in this regard that, constitutionally, the Court can also assign the JBC other functions and duties - a power that suggests authority beyond what is purely supervisory.

[14] In *Hon. Dadole v. COA*, 441 Phil. 532, 543-544, citing *Drilon v. Lim*, 336 SCRA 201, 214-215, we have further discussed the difference between control and supervision. "Officers in control lay down the rules in the performance or accomplishment of an act. If these rules are not followed, they may, in their discretion, order the act undone or redone by their subordinates or even decide to do it themselves. On the other hand, supervision does not cover such authority. Supervising officials merely see to it that the rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed."

[15] See the definition of Administrative Supervision in Section 38, paragraph 2, Chapter 7, Book IV of the Administrative Code:

(2) Administrative Supervision.—(a) Administrative supervision which shall govern the administrative relationship between a department or its equivalent and regulatory agencies or other agencies as may be provided by law, shall be limited to the authority of the department or its equivalent to generally oversee the operations of such agencies and to insure that they are managed effectively, efficiently and economically but without interference with day-to-day activities; or require the submission of reports and cause the conduct of management audit, performance evaluation and inspection to determine compliance with policies, standards and guidelines of the department; to take such action as may be necessary for the proper performance of official functions, including rectification of violations, abuses and other forms of maladministration; and to review and pass upon budget proposals of such agencies but may not increase or add to them;

[16] Section 38, paragraph 2 (c), Chapter 7, Book IV of the 1987 Administrative Code.

[17] A.M. No. 98-5-01-SC, November 9, 1998, 298 SCRA 408.

[18] G.R. No. 191002, March 17, 2010, 615 SCRA 666.

[19] *Supra* note 2.

CONCURRING OPINION

LEONEN, J.:

I concur in the dismissal of the Petition.

The Petition should be dismissed as it is procedurally infirm and fails to establish petitioner's right to be nominated to a judicial post.

I

A writ of mandamus, certiorari, or prohibition cannot be issued against the Judicial and Bar Council or can it be the subject of a petition for declaratory relief absent a clear and convincing case of grave abuse of discretion.

Under Rule 65, Section 3 of the Rules of Civil Procedure, a petition for mandamus may be availed to compel the performance of a duty, or to compel the inclusion of a person in the use and enjoyment of a right or office to which he or she is entitled. The provision states:

SEC. 3. Petition for mandamus. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

In particular, the remedy of mandamus requires the performance of a ministerial duty:

Generally, the writ of mandamus lies to require the execution of a ministerial duty. A ministerial duty is one that "requires neither the exercise of official discretion nor judgment." It connotes an act in which nothing is left to the discretion of the person executing it. It is a "simple, definite duty arising under conditions admitted or proved to exist and imposed by law." Mandamus is available to compel action, when refused, on matters involving discretion, but not to direct the exercise of judgment or discretion one way or the other.[1] (Citations omitted)

Although petitioner filed, among others, a petition for mandamus, his prayer does not seek the performance by the Judicial and Bar Council of a specific ministerial act. In particular, he prays that:

[p]ending resolution of this Petition, a temporary Restraining order, and/ or a writ of preliminary injunction be issued compelling Public Respondents to refrain from disqualifying the Petitioner and all other Judges similarly situated with the petitioner in their present or future application for second level courts (RTC Judges) and to include the petitioner as applicants in the above mentioned RTCs and go through the process of selection and evaluation[.][2]

It can be inferred from his prayer that petitioner seeks to compel the Judicial and Bar Council to include him in the list of applicants for the vacant positions in the Regional Trial Courts. In my dissenting opinion in *Jardeleza v. Judicial and Bar Council*: [3]

[t]he determination by the Judicial and Bar Council of the qualifications and fitness of applicants for positions in the judiciary is not a ministerial duty. It is constitutionally part of its discretion. Mandamus cannot compel the amendment of any list already transmitted, and it cannot be made available to compel the Council to transmit a name not in the original list.

De Castro v. Judicial and Bar Council clarifies a unique instance when mandamus lies against the Council. This is with respect only to the constitutional duty to allow the President the mandatory 90 days to make an

appointment. Thus:

The duty of the JBC to submit a list of nominees before the start of the President's mandatory 90-day period to appoint is ministerial, but its selection of the candidates whose names will be in the list to be submitted to the President lies within the discretion of the JBC. The object of the petitions for mandamus herein should only refer to the duty to submit to the President the list of nominees for every vacancy in the Judiciary, because in order to constitute unlawful neglect of duty, there must be an unjustified delay in performing that duty. For mandamus to lie against the JBC, therefore, there should be an unexplained delay on its part in recommending nominees to the Judiciary, that is, in submitting the list to the President.[4] (Emphasis supplied)

A writ of certiorari or prohibition cannot also be issued against the Judicial and Bar Council as the remedy of certiorari can only be used against a tribunal, board, or officer exercising judicial or quasi-judicial functions while the remedy of prohibition can only be used against any tribunal, corporation, board, officer, or person exercising judicial, quasi-judicial, or ministerial functions.

Rule 65, Section 1 and Section 2 of the Rules of Civil Procedure state:

SECTION 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

.....

SECTION 2. Petition for prohibition. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require. (Emphasis supplied)

The ponencia correctly stated that "[i]n the process of selecting and screening applicants, the [Judicial and Bar Council] neither acted in any judicial or quasi-judicial capacity nor assumed unto itself any performance of judicial or quasi-judicial prerogative." [5]

The functions of the Judicial and Bar Council are neither judicial nor quasi-judicial in nature. It does not perform "adjudicatory functions such that its awards, determine the rights of parties, and their decisions have the same effect as judgments of a court." [6] The exercise by the Judicial and Bar Council of its constitutional duty is also not a ministerial act by which it may be restrained from performing.

The relief sought by petitioner cannot also be the subject of an action for declaratory relief. Under Rule 63, Section 1 of the Rules of Civil Procedure, a petition for declaratory relief may be filed before the Regional Trial Court by one "whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation[.]"

The ponencia correctly stated that "no person possess[es] a legal right under the Constitution to be included in the list of nominees for vacant judicial positions." [7] The Constitution does not grant to any person the right to be nominated when he or she qualifies. The Judicial and Bar Council is given by the Constitution the full discretion on the selection and qualification of the nominees for judicial office. There are no rights adjudicated in the

Judicial and Bar Council's selection process.

It is also settled that this court does not have original jurisdiction over petitions for declaratory relief. In *Chavez v. Judicial and Bar Council*,^[8] this court previously encountered a petition for declaratory relief for this court to interpret Article VIII, Section 8(1) of the Constitution. This court, in ruling that the Regional Trial Court has original jurisdiction over a petition for declaratory relief, stated the following:

The Constitution as the subject matter, and the validity and construction of Section 8 (I), Article VIII as the issue raised, the petition should properly be considered as that which would result in the adjudication of rights sans the execution process because the only relief to be granted is the very declaration of the rights under the document sought to be construed. It being so, the original jurisdiction over the petition lies with the appropriate Regional Trial Court (RTC). Notwithstanding the fact that only questions of law are raised in the petition, an action for declaratory relief is not among those within the original jurisdiction of this Court as provided in Section 5, Article VIII of the Constitution.^[9] (Emphasis supplied)

II

The only exception to the use of Rule 65 is when this court's power of judicial review due to a constitutional violation is raised. While expansive, the exercise of this power is subject to limitations: "(1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case, such that he has sustained or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case."^[10]

In *Prof. David v. President Macapagal-Arroyo*:^[11]

[a]n actual case or controversy involves a conflict of legal right, an opposite legal claims susceptible of judicial resolution. It is "definite and concrete, touching the legal relations of parties having adverse legal interest"; a real and substantial controversy admitting of specific relief.^[12]

Petitioner has no legally vested right to a nomination in an application before the Judicial and Bar Council. The relief he requests cannot be granted since there is nothing in the Constitution that gives this court the power to order the Judicial and Bar Council to nominate him. There is no actual case or controversy that merits this court's power of review.

III

The zeal that characterizes the vigilance of petitioner to protect his constitutional right against unequal protection of the laws is commendable but unfortunately misplaced.

The five-year requirement imposed by the Judicial and Bar Council for first-level court judges before they can be considered for another tier is reasonable. This same requirement cannot be imposed on applicants from the public service, private practice, or the academe simply because they are not from a judicial service. This does not mean, however, that there is no requirement or any consideration made by the Judicial and Bar Council that is equivalent or more stringent. We cannot assume that a constitutional body tasked to determine the fitness, competence, integrity, and independence of those that seek to serve in our branch of government will be less dedicated to its task when screening these applicants.

At the very least, petitioner has not shown clearly and convincingly that the burden that he imagines he bears has no equivalent to other applicants who are not similarly situated. Certainly, any petitioner who raises the constitutionality of an act of a constitutional organ tasked to discharge its duties bears the burden of showing that

his claims are fully grounded.

ACCORDINGLY, I vote to DENY the Petition.

[1] Metropolitan Manila Development Authority, et al. v. Concerned Residents of Manila Bay, et al., 595 Phil. 305, 326 (2008) [Per J. Velasco, Jr., En Banc].

[2] Petition, pp. 15-16.

[3] G.R. No. 213181, August 19, 2014 [Per J. Mendoza, En Banc].

[4] J. Leonen, Dissenting Opinion in Jardeleza v. Judicial and Bar Council, G.R. No. 213181 August 19, 2014 21 [Per J. Mendoza, En Banc], citing De Castro v. Judicial and Bar Council, et al., 629 Phil 629 706 (2010) [Per J. Bersamin, En Banc].

[5] Ponencia, p. 4.

[6] Santos v. Go, 510 Phil. 137, 148 (2005) [Per J. Quisumbing, First Division].

[7] Ponencia, p. 6.

[8] G.R. No. 202242, July 17, 2012, 676 SCRA 579 [Per J. Mendoza, En Banc].

[9] Id. at 592.

[10] Id. at 593-594, citing Senate of the Philippines v. Executive Secretary Ermita, 522 Phil. 1, 27 (2006) [Per J. Carpio Morales, En Banc].

[11] 522 Phil. 705 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[12] Id. at 753, citing ISAGANI CRUZ, PHILIPPINE POLITICAL LAW 259 (2002).

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